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## APPENDIXES

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## APPENDIX 'A'

### Summary explanation of Michigan's criminal procedure, including consideration of 'One-Man Grand Jury', so-called.

For a clear understanding of the Michigan 'one-man grand jury', we deem it essential to review the procedure ordained by the legislature of that State for judicial investigations of complaints involving criminal offenses, the apprehension of accused persons, the 'preliminary examination' conducted by magistrates, and further proceedings before trial.

It is important to observe that, although the phrase recurs throughout the record, the term 'one-man grand jury' is not found in any statute, and that the magistrate who conducts the investigation possesses few of the traditional powers of the historic grand jury.

The State Constitution of 1835 (article 1, § 11) provided that no person should be held for a 'criminal offense unless on the presentment or indictment of a 'grand jury', and that the Constitution of 1850 (article 6, § 28) as well as our present fundamental law, ratified in 1909 (article 2, § 19) omitted this requirement and substituted therefor the 'right to be informed of the nature of the accusation'.<sup>[14]</sup>

[14]

The Constitution of Michigan does not guarantee that an accused person shall have the right to a preliminary examination, though such a privilege is accorded by statute.

The Michigan statute charts a course of procedure for

**—Ordinary course of procedure before trial.**

magistrates (in ordinary circumstances) when investigating complaints of

criminal offenses, issuing warrants thereon, conducting 'preliminary examinations', and, when probable cause is shown, binding over for trial the person accused of offenses not cognizable by a justice of the peace,

Act No. 175 ('Code of Criminal Procedure'), Chap. VII, §§ 1-5, 11-13 and 15, Pub. Acts 1927 (3 Comp. Laws Mich. 1929, §§ 17193-17197, 17203-17205, and 17207 [Stat. Ann. §§ 28.919-28.923, 28.929-28.931 and 28.933]).

This chapter of the code provides in substance that whenever any complaint shall be made to any 'magistrate',<sup>[15]</sup> that such an offense has been committed, he shall examine on oath the complainant and any witnesses who may be produced by him (§ 2).

Upon sufficient showing of the commission of such a crime, the magistrate is authorized to issue his warrant to bring the accused before him 'to be dealt with according to law' (§ 3), and, when the accused person appears, the magistrate is required to set a date for a 'preliminary examination' to be conducted by him (§ 4).

Should it appear from the testimony taken at the examination, that the offense charged in the warrant has been committed and that 'there is probable cause to be-

[15]

Such magistrates include the several circuit judges.—Act No. 175, Chap. IV, § 1, Pub. Acts 1927 (3 Comp. Laws Mich. 1929, § 17135 [Stat. Ann. § 28.860]).

lieve the prisoner guilty thereof' (§ 5), 'said magistrate shall forthwith bind such defendant to appear before the circuit court of such county or any court having jurisdiction of said cause, for trial' (§ 13). The magistrate is required to make a prompt return of his findings to the trial court (§ 15), accompanied by a transcript of the testimony taken at the examination (§ 11).

Under the decisions of the supreme court of the State, the magistrate's finding of probable cause to hold to trial, is not conclusive and, upon the respondent's motion to quash the information, and on review of the transcript of the testimony taken during the preliminary examination, the trial court is authorized and required to reverse the order of the magistrate and discharge the prisoner.<sup>[16]</sup>

Such sections of Chapter VI of the Michigan code of criminal procedure as are pertinent to the matters involved, appear in **Appendix 'B', post**, p. 37.

While the State Constitution of 1850 (article 6, § 28) abandoned the traditional grand jury system, and the present Constitution failed to revive it (article 2, § 19), and although Chapter VII, § 7, of the 1927 code of criminal procedure reenacted a statute forbidding the drawing of such grand juries (Act No. 138, Pub. Acts 1859), this chapter expressly authorizes the calling of

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[16]

People v. Rice, 206 Mich. 644,  
People v. McDonald, 233 Mich. 98,  
People v. Licavoli, 256 Mich. 229,  
People v. Hallas, 257 Mich. 127,  
People v. Hirschfield, 271 Mich. 20,  
People v. Wilkin & Walsh, 276 Mich. 679, 688.

special grand juries composed of 16 members, whenever 'the judge (of any court) shall so direct in writing under his hand' (§ 7), and it retains for this purpose certain vestigial provisions governing their organization and proceedings (§§ 8-19). [17]

That part of Chapter VII which authorized the investigation conducted by the

**Magisterial investigation  
of suspected offenses.**

circuit judge in this cause (§§ 3-6) was a reenactment of a statute (Act No. 196, Pub. Acts 1917 as amended) enlarging the powers of magistrates to investigate complaints and issue warrants, and it adopts the framework of Chapter VI, §§ 2-4, of the code heretofore referred to.

The key that opens the door to the exertion of such judicial power is found in section three (3) of the chapter:

**"Sec. 3.** Whenever by reason of the filing of any complaint, which may be upon information and belief, any justice of the peace, police judge or judge of a court of record shall have probable cause to suspect that any crime, offense, misdemeanor or violation of any city ordinance shall have been committed within his jurisdiction, and that any person may be able to give any material evidence respecting such offense, such justice or judge in his discretion may, and upon application of the prosecuting attorney, or city attorney in the case of suspected violation of ordinances, shall require such person to

[17]

This accounts in part at least for several anachronisms in the chapter.

attend before him as a witness and answer such questions as such justice or judge may require concerning any violation of law about which he may be questioned; and the proceedings to summon such witness and to compel him to testify shall, as far as possible, be the same as proceedings to summon witnesses and compel their attendance and testimony, and such witnesses shall be entitled to the same compensation as in other criminal proceedings" (3 Comp. Laws Mich. 1929, § 17217 [Stat. Ann. § 28.943]).

If upon such inquiry the justice or judge shall be satisfied that any offense has been committed and that there is probable cause to suspect any person or persons to be guilty thereof, 'he may cause the apprehension of such person or persons by proper process and, upon the return of such process served or executed, the justice or judge *shall proceed with the case . . . in like manner as upon formal complaint*'. Also, if so satisfied, he shall report the matter to the proper officials to the end that any public officer so accused may be removed from office. So far as secrecy is concerned those participating in the inquiry 'shall be governed by the provisions of law relative to grand juries' (§ 4).

Section six (6) of this chapter provides protection under the state constitutional mandate that 'no person shall be compelled in any criminal case to be a witness against himself' (article 2, § 16):

**"Sec. 6.** No person shall upon such inquiry be required to answer any questions the answers of which might tend to incriminate him except upon motion in writing by the prosecuting attorney which shall be granted by such justice or judge, and any such

questions and answers shall be reduced to writing and entered upon the docket or journal of such justice or judge, and no person required to answer such questions upon such motion shall thereafter be prosecuted for any offense concerning which such answers may have tended to incriminate him" (3 Comp. Laws Mich. 1929, § 17220 [Stat. Ann. § 28.946]).

#### APPENDIX 'B'

##### Pertinent provisions of 'Michigan Code of Criminal Procedure' pertaining to preliminary examinations:

Act No. 175, Chap. VI, §§ 1, 2, 3, 4, 5, 11, 12, 13 and 15, Pub. Acts 1927 [3 Comp. Laws 1929, §§ 17193, 17194, 17195, 17196, 17197, 17203, 17204, 17205, 17207 (Stat. Ann. §§ 28.919, 28.920, 28.921, 28.922, 28.923, 28.929, 28.930, 28.931, 28.933)]:

#### Chapter VI

**"SECTION 1.** The state and accused shall be entitled to a prompt examination and determination by the examining magistrate in all criminal causes and it is hereby made the duty of all courts and public officers having duties to perform in connection with such examination, to bring them to a final determination without delay except as it may be necessary to secure to the accused a fair and impartial examination.

**"Sec. 2.** Whenever complaint shall be made to any magistrate named in section one (1), chapter

four (4), of this act, that a criminal offense not cognizable by a justice of the peace has been committed, he shall examine on oath the complainant and any witnesses who may be produced by him.

**“Sec. 3.** If it shall appear from such examination that any criminal offense not cognizable by a justice of the peace has been committed, the magistrate shall issue a warrant directed to the sheriff, chief of police, constable or any peace officer of the county, reciting the substance of the accusation and commanding him forthwith to take the person accused of having committed such offense and to bring him before such magistrate to be dealt with according to law, and in the same warrant may require such officer to summon such witnesses as shall be named therein.

**“Sec. 4.** The magistrate before whom any person is brought on a charge of having committed an offense not cognizable by a justice of the peace, shall set a day for examination not exceeding ten (10) days thereafter, at which time he shall examine the complainant and the witnesses in support of the prosecution, on oath in the presence of the prisoner, in regard to the offense charged and in regard to any other matters connected with such charge which such magistrate may deem pertinent.

**“Sec. 5.** If it shall appear that an offense not cognizable by a justice of the peace has been committed, and that there is probable cause to believe the prisoner guilty thereof, and if the offense be bailable by the magistrate, and the prisoner offer sufficient bail, it shall be taken and the prisoner discharged; but if no sufficient bail be offered, or the

offense be not bailable by the magistrate, the prisoner shall be committed to jail for trial.

**"Sec. 11.** Witnesses may be compelled to appear before such magistrate by subpoenas issued by him, or by any officer or court authorized to issue subpoenas, in the same manner and with the like effect and subject to the same penalties for disobedience, or for refusing to be sworn or to testify, as in cases of trials before justices of the peace; and the evidence given by the witnesses examined shall be reduced to writing by such magistrate, or under his direction and shall be signed by the witnesses respectively: Provided, That unless otherwise provided by law, the evidence so given shall be taken down in shorthand by a county stenographer where one has been appointed under the provision of any local act of the legislature or by the board of supervisors of the county wherein such examination is held, or the magistrate for cause shown may appoint some other suitable stenographer at the request of the prosecuting attorney of said county with the consent of the respondent or his attorney to act as official stenographer pro tem for the court of such magistrate to take down in shorthand the testimony of any such examination, and any stenographer so appointed shall take the constitutional oath as such official stenographer and shall be entitled to the following fees: Six (6) dollars for each day and three (3) dollars for each half day while so employed in taking down such testimony and ten (10) cents per folio for typewriting such testimony so taken down in shorthand and the same may be allowed and paid out of the treasury of the county in which such testimony is taken: Provided further, That it shall not

be necessary for a witness or witnesses whose testimony is taken in shorthand by such stenographer above provided, to sign such testimony but any witness or witnesses shall have the right to have such testimony read to them upon their request. Such testimony, after being typewritten, shall be received and filed in the court to which the accused is held for trial without the signature of such witness or witnesses for the same purpose and with like effect as the testimony of witnesses hereinabove provided, which is signed by such witness or witnesses and such testimony so taken shall be considered prima facie evidence of the testimony of such witness or witnesses at such examination.

**“Sec. 12.** After the testimony in support of the prosecution has been given, the witnesses for the prisoner, if he have any, shall be sworn, examined and cross-examined and he may be assisted by counsel in such examination and in the cross-examination of the witnesses in support of the prosecution.

**“Sec. 13.** If it shall appear to the magistrate upon the examination of the whole matter, either that no offense has been committed or that there is not probable cause for charging the defendant therewith, he shall discharge such defendant. If it shall appear to the magistrate upon the examination of the whole matter, that an offense not cognizable by a justice of the peace has been committed and there is probable cause for charging the defendant therewith, said magistrate shall forthwith bind such defendant to appear before the circuit court of such county or any court having jurisdiction of said cause, for trial.

**"Sec. 15.** All examinations and recognizances taken by any magistrate pursuant to any of the provisions of this chapter, shall be forthwith certified and returned by him to the clerk of the court before which the party charged is bound to appear, and if such magistrate shall refuse or neglect to return the same, he may be compelled forthwith by rule of the court, and in case of disobedience he may be proceeded against by attachment as for a contempt."

#### **APPENDIX 'C'**

Pertinent provisions of 'Michigan Code of Criminal Procedure' pertaining to investigation of suspected offenses and proceedings before trial:

Act No. 175, Chap. VII, §§ 1, 2, 3, 4, 6, 7, 9, 19, 40 and 42, Pub. Acts 1927 [3 Comp. Laws 1929, §§ 17215, 17216, 17217, 17218, 17220, 17221, 17223, 17233, 17254, 17256 (Stat. Ann. §§ 28.941, 28.942, 28.943, 28.944, 28.946, 28.947, 28.949, 28.959, 28.980, 28.982)]:

#### **Chapter VII**

**SECTION 1.** The several circuit courts of this state, the recorders' courts and any court of record having jurisdiction of criminal causes, shall possess and may exercise the same power and jurisdiction to hear, try and determine prosecutions upon informations for crimes, misdemeanors and offenses, to issue writs and process and do all other acts therein as they possess and may exercise in cases of like prosecutions upon indictment

**“Sec. 2.** All provisions of the law applying to prosecutions upon indictments, to writs and process therein and the issuing and service thereof, to commitments, bail, motions, pleadings, trials, appeals and punishments, or the execution of any sentence, and to all other proceedings in cases of indictments whether in the court of original or appellate jurisdiction, shall, in the same manner and to the same extent as near as may be, be applied to informations and all prosecutions and proceedings thereon.

**“Sec. 3.** Whenever by reason of the filing of any complaint, which may be upon information and belief, any justice of the peace, police judge or judge of a court of record shall have probable cause to suspect that any crime, offense, misdemeanor or violation of any city ordinance shall have been committed within his jurisdiction, and that any person may be able to give any material evidence respecting such offense, such justice or judge in his discretion may, and upon application of the prosecuting attorney, or city attorney in the case of suspected violation of ordinances, shall require such person to attend before him as a witness and answer such questions as such justice or judge may require concerning any violation of law about which he may be questioned; and the proceedings to summon such witness and to compel him to testify shall, as far as possible, be the same as proceedings to summon witnesses and compel their attendance and testimony, and such witnesses shall be entitled to the same compensation as in other criminal proceedings.

**“Sec. 4.** If upon such inquiry the justice or judge shall be satisfied that any offense has been commit-

ted and that there is probable cause to suspect any person or persons to be guilty thereof, he may cause the apprehension of such person or persons by proper process and, upon the return of such process served or executed, the justice or judge shall proceed with the case, matter or proceeding in like manner as upon formal complaint. And if upon such inquiry the justice or judge shall find from the evidence that there is probable cause to believe that any public officer, elective or appointive and subject to removal by law, has been guilty of misfeasance or malfeasance of office or wilful neglect of duty or of any other offense prescribed as a ground of removal, the said justice or judge shall make a written finding setting up the offense so found and shall serve said finding upon the public officer, public board or body having jurisdiction under the law to conduct removal proceedings against said officer. And said finding shall be sufficient complaint as a basis for removal of said officer and the public officer, public board or public body having jurisdiction of removal proceedings against said officer shall proceed in the method prescribed by law for a hearing and determination of said charges. And in respect of communicating or divulging any statement made by such witnesses during the course of such inquiry, the justice, judge, prosecuting attorney and other person or persons who may, at the discretion of such justice, be admitted to such inquiry, shall be governed by the provisions of law relative to grand jurors.

**“Sec. 6.** No person shall upon such inquiry be required to answer any questions the answers of which might tend to inerminate him except upon motion in writing by the prosecuting attorney which

shall be granted by such justice or judge, and any such questions and answers shall be reduced to writing and entered upon the docket or journal of such justice or judge, and no person required to answer such questions upon such motion shall thereafter be prosecuted for any offense concerning which such answers may have tended to incriminate him.

**“Sec. 7.** Grand juries shall not hereafter be drawn, summoned or required to attend at the sittings of any court within this state, as provided by law, unless the judge thereof shall so direct by writing under his hand, and filed with the clerk of said court.

**“Sec. 9.** The clerk of the court shall prepare an alphabetical list of all the persons returned as grand jurors, and when the jury is to be impaneled, the following oath shall be administered to them: ‘You as grand jurors of this inquest, for the body of this county of . . . do solemnly swear that you will diligently inquire and true presentment make of all such matters and things as shall be given you in charge; your own counsel and the counsel of the people, and of your fellows, you shall keep seeret; you shall present no person for envy, hatred or malice, neither shall you leave any person unpresented for love, fear, favor, affection or hope of reward; but you shall present things truly, as they come to your knowledge, according to the best of your understanding; so help you God.’

**“Sec. 19.** Members of the grand jury may be required by any court to testify, whether the testimony of a witness examined before such jury is consistent

with, or different from the evidence given by such witness before such court; and they may also be required to disclose the testimony given before them by any person, upon complaint against such person for perjury, or upon his trial for such offense; but in no case can a member of a grand jury be obliged or allowed to testify or declare in what manner he or any other member of the jury voted on any question before them, or what opinions were expressed by any juror in relation to any such question.

**"Sec. 40.** All informations shall be filed during term in the court having jurisdiction of the offense specified therein, after the proper return is filed by the examining magistrate by the prosecuting attorney of the county as informant; he shall subscribe his name thereto, and indorse thereon the names of the witnesses known to him at the time of filing the same. Names of other witnesses may be indorsed before or during the trial by leave of the court and upon such conditions as the court shall determine.

**"Sec. 42.** No information shall be filed against any person for any offense until such person shall have had a preliminary examination therefor, as provided by law, before a justice of the peace or other examining magistrate or officer, unless such person shall waive his right to such examination: Provided, however, That informations may be filed without such examination against fugitives from justice, and any fugitive from justice against whom an information shall be filed, may be demanded by the governor of this state of the executive authority of

any other state or territory, or of any foreign government, in the same manner and the same proceeding may be had thereon as provided by law in like cases of demand upon indictment filed.”

